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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 7, 2018

William J. Rehrig, CEO
Michael J. Doka, President
Ronald Johnson, Facility Manager
Rehrig Pacific Company
4010 26th St.
Los Angeles, CA 90023

VIA FIRST CLASS MAIL

Cogency Global, Inc.
Registered Agent for Rehrig Pacific Company
1325 J. Street, Suite 1550
Sacramento, CA 95814

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Mr. Rehrig, Mr. Doka, and Mr. Johnson:

I am writing on behalf of the Center for Biological Diversity ("CBD") in regard to violations of the Clean Water Act (the "Act") that CBD believes are occurring at Rehrig Pacific Company's industrial facility located at 4010 26th Street in Los Angeles, California ("Facility"). CBD is a non-profit public benefit corporation dedicated to working with communities to advocate for the protection of lands, waters, and the climate. CBD has members living in the community adjacent to the Facility and the Los Angeles River Watershed. CBD and its members are deeply concerned with protecting the environment in and around their communities, including the Los Angeles River Watershed. This letter is being sent to Rehrig Pacific Company, William Rehrig, Michael Doka, and Ronald Johnson as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Rehrig").

This letter addresses Rehrig's unlawful discharge of pollutants from the Facility to

Notice of Violations and Intent to File Suit

channels that flow into the Los Angeles River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CBD refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBD hereby places Rehrig on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBD intends to file suit in federal court against Rehrig under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. Center for Biological Diversity

CBD is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with a field office in Los Angeles. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats throughout the United States and abroad. The Center has more than 50,000 active members, including over 3,000 in the LA area, and over 1.2 million online activists. The Center works to ensure the long-term health and viability of animal and plant communities across the United States and elsewhere, and to protect the habitat these species need to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. To further this mission, CBD actively seeks federal and state implementation of the Clean Water Act. Where necessary, CBD directly initiates enforcement actions on behalf of itself and its members.

Members of CBD reside in Los Angeles County, and near the Los Angeles River, Los Angeles River Estuary, and San Pablo Bay (hereinafter "Receiving Waters"). As explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. CBD members use the Receiving Waters to swim, boat, kayak, bird watch, view wildlife, photograph, hike, bike, walk, run, sightsee, and for aesthetic enjoyment. Additionally, CBD members use the Receiving Waters to

engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs CBD members' use and enjoyment of these waters. Thus, the interests of CBD's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

B. The Rehrig Facility

On information and belief, CBD alleges that the industrial processes that occur at the Facility include activities associated with the manufacturing of pallets and crates, trays, roll-out carts and bins using raw and recycled plastic materials. This also includes the loading and unloading of trucks, as well as activities associated with oily water collection. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") indicates that the scheduled operating hours are 7:00 am to 5:00 pm Monday through Friday.

C. Discharges From the Facility

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") is 4 19I005336. In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Rehrig certifies that the Facility is classified under SIC code 3089, a manufacturer of plastics products, as well as under SIC code 2821, plastics material and synthetic resins. The Facility collects and discharges storm water from its 204,791 square foot industrial site through at least four outfalls. On information and belief, CBD alleges the outfalls discharge storm water that is commingled with runoff from the Facility's industrial areas. The outfalls discharge to channels that flow into Reach 2 of the Los Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.

D. Waters Receiving the Facility's Discharges

The Regional Board has identified beneficial uses of the Los Angeles River, the Los Angeles River Estuary, and the San Pedro Bay and established water quality standards for these waters in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/. The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, rare, threatened, or endangered species, preservation of biological habitats, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting.

The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking,

sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37. The Basin Plan provides that “[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-24. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26. The Basin Plan provides that “[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25. The Basin Plan provides that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-38. The Basin Plan provides that “[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37.

The EPA has adopted a freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule (“CTR”)).¹

The EPA 303(d) List of Water Quality Limited Segments lists Reach 2 of the Los Angeles River as impaired for trash, oil, nutrients, copper, and lead, among other pollutants. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml. Reach 1 of the Los Angeles River is impaired for zinc, lead, copper, trash, pH, nutrients, and pathogens, among other pollutants. The Los Angeles River Estuary is impaired for trash and sediment toxicity, among other pollutants. San Pedro Bay is impaired for sediment toxicity, among other pollutants.

¹ These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).² The following benchmarks have been established for pollutants discharged by the Facility: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; and zinc – 0.26 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; and zinc – 0.26 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Rehrig has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, § A(8); 2015 Permit, § X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water

² The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Rehrig has discharged and continues to discharge storm water with unacceptable levels of pH, O&G, and zinc in violation of the General Permit. Rehrig's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
3/22/18	Zinc	0.71 mg/L	0.120 mg/L (CMC)	Indiana St. Drain
3/2/18	Zinc	0.18 mg/L	0.120 mg/L (CMC)	Indiana St. Drain
2/17/17	Zinc	0.548 mg/L	0.120 mg/L (CMC)	Indiana St. Drain
2/17/17	Zinc	0.264 mg/L	0.120 mg/L (CMC)	Pump Room Indiana Street
2/17/17	Zinc	0.173 mg/L	0.120 mg/L (CMC)	26th St. Drain
12/30/16	Zinc	0.189 mg/L	0.120 mg/L (CMC)	Indiana St. Drain
12/30/16	Zinc	0.153 mg/L	0.120 mg/L (CMC)	Pump Room Indiana Street
12/30/16	Zinc	0.196 mg/L	0.120 mg/L (CMC)	26th St. Drain
3/22/18	pH	5.5 s.u.	6.5 – 8.5 s.u.	26th St.
3/22/18	pH	5.5 s.u.	6.5 – 8.5 s.u.	Indiana St. Drain

3/22/18	pH	5 s.u.	6.5 – 8.5 s.u.	Pump Room
3/2/18	pH	6.3 s.u.	6.5 – 8.5 s.u.	26th St.
3/2/18	pH	6 s.u.	6.5 – 8.5 s.u.	Indiana St. Drain
3/2/18	pH	6.3 s.u.	6.5 – 8.5 s.u.	Pump Room
2/17/17	pH	6 s.u.	6.5 – 8.5 s.u.	Indiana St. Drain
2/17/17	pH	6 s.u.	6.5 – 8.5 s.u.	Pump Room Indiana Street
4/19/16	pH	6.06 s.u.	6.5 – 8.5 s.u.	26th St. Drain
4/19/16	pH	5.87 s.u.	6.5 – 8.5 s.u.	Indiana St. Drain
3/11/16	pH	6.32 s.u.	6.5 – 8.5 s.u.	26th St. Drain
3/11/16	pH	6.45 s.u.	6.5 – 8.5 s.u.	Indiana St. Drain
5/14/15	Narrative	Dirt particles	Basin Plan at 3-37	26th and Indiana St. Drains
4/22/15	Narrative	Dirt particles	Basin Plan at 3-37	26th and Indiana St. Drains
12/2/14	Narrative	Cloudy water; Oil sheen	Basin Plan at 3-27; Basin Plan at 3-29	Discharge from 26th St. and Indiana St. Drains
10/31/14	Narrative	Cloudy water; Oil sheen	Basin Plan at 3-27; Basin Plan at 3-29	Discharge from 26th St. Drain and Indiana St. Drain
2/26/14	Narrative	Cloudy water; Oil sheen	Basin Plan at 3-27; Basin Plan at 3-29	Discharge from 26th St. and Indiana St. Drains
11/21/13	Narrative	Cloudy water; Oil sheen	Basin Plan at 3-27; Basin Plan at 3-29	Discharge from 26th St. and Indiana St. Drains

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2015-2016, 2016-2017, and 2017-2018 reporting years and the 2013-2014 and 2014-2015 wet seasons. CBD alleges that since at least November 21, 2013, and continuing through today, Rehrig has discharged from the Facility storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- Zinc – 0.12 mg/L (CMC)
- pH – The pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges. (Basin Plan at 3-35).
- Oil and grease – Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. (Basin Plan at 3-29).

- Suspended or settleable material – Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses. (Basin Plan at 3-37).
- Coloration – Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. (Basin Plan at 3-27).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
3/22/18	pH	5.5 s.u.	6.0 – 9.0 s.u. ³	26th St.
3/22/18	pH	5.5 s.u.	6.0 – 9.0 s.u.	Indiana St. Drain
3/22/18	pH	5 s.u.	6.0 – 9.0 s.u.	Pump Room
4/19/16	pH	5.87 s.u.	6.0 – 9.0 s.u.	Indiana St. Drain
3/2/18	Oil & Grease	25 mg/L	15 mg/L	26th St.
3/2/18	Oil & Grease	58 mg/L ⁴	15 mg/L	Indiana St. Drain
3/2/18	Oil & Grease	46 mg/L	15 mg/L	Pump Room
2017-2018 Reporting Year	Oil & Grease	22.92 mg/L	15 mg/L	All discharge points ⁵
2/17/17	Oil & Grease	28.8 mg/L ⁶	15 mg/L	Indiana St. Drain
2/17/17	Oil & Grease	34.4 mg/L	15 mg/L	Pump Room Indiana Street
2/17/17	Oil & Grease	27.7 mg/L	15 mg/L	26th St. Drain
12/30/16	Oil & Grease	21.7 mg/L	15 mg/L	Pump Room Indiana Street

³ This value for pH is the instantaneous maximum NAL; there is no annual NAL for pH.

⁴ This value is the second value for the 2017-2018 reporting year that exceeded 25 mg/L, the instantaneous maximum NAL for O&G.

⁵ This value represents the average of all O&G measurements taken at the Facility during the 2017-2018 reporting year and is higher than 15 mg/L, the annual NAL for O&G.

⁶ This value is the second value for the 2016-2017 reporting year that exceeded 25 mg/L, the instantaneous maximum NAL for O&G.

2016-2017 Reporting Year	Oil & Grease	25.26 mg/L	15 mg/L	All discharge points ⁷
4/19/16	Oil & Grease	19.5 mg/L	15 mg/L	26th St. Drain
4/19/16	Oil & Grease	17.8 mg/L	15 mg/L	Indiana St. Drain
3/11/16	Oil & Grease	41.4 mg/L ⁸	15 mg/L	26th St. Drain
3/11/16	Oil & Grease	45.1 mg/L	15 mg/L	Indiana St. Drain
2015-2016 Reporting Year	Oil & Grease	30.95 mg/L	15 mg/L	All discharge points ⁹
3/22/18	Zinc	0.71 mg/L	0.120 mg/L (CMC)	Indiana St. Drain
2/17/17	Zinc	0.548 mg/L	0.120 mg/L (CMC)	Indiana St. Drain
2/17/17	Zinc	0.264 mg/L	0.120 mg/L (CMC)	Pump Room Indiana Street

The information in the above table reflects data gathered from Rehrig's self-monitoring during the 2015-2016, 2016-2017, and 2018-2018 reporting years and the 2013-2014 and 2014-2015 wet seasons. CBD alleges that since at least June 7, 2013, Rehrig has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and applicable NALs for pH, O&G, and zinc.

CBD's investigation, including its review of Rehrig's SWPPP, Rehrig's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable EPA benchmark values and NALs, indicates that Rehrig has not implemented BAT and BCT at the Facility for its discharges of pH, O&G, zinc, plastic pellets, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Rehrig was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Rehrig is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CBD alleges that such violations also have occurred and will occur on other rain dates, including on information

⁷ This value represents the average of all O&G measurements taken at the Facility during the 2016-2017 reporting year and is higher than 15 mg/L, the annual NAL for O&G.

⁸ This value is the second value for the 2015-2016 reporting year that exceeded 25 mg/L, the instantaneous maximum NAL for O&G.

⁹ This value represents the average of all O&G measurements taken at the Facility during the 2015-2016 reporting year and is higher than 15 mg/L, the annual NAL for O&G.

and belief every significant rain event that has occurred since June 7, 2013, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit.

Attachment A, attached hereto, sets forth each of the specific rain dates on which CBD alleges on information and belief that Rehrig has discharged storm water containing impermissible and unauthorized levels of pH, zinc, O&G, as well as plastic pellets, in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.¹⁰

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharges of pH, zinc, O&G, plastic pellets and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Rehrig is subject to penalties for violations of the General Permit and the Act since at least June 7, 2013.

Further, CBD puts Rehrig on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which Rehrig must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Rehrig's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented best management practices ("BMPs") that achieve BAT/BCT.¹¹ Finally, even though Rehrig has submitted Exceedance Response Action Plans pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

¹⁰The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Los Angeles located approximately 5.7 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/cdo-web/>. (Last accessed on June 6, 2018).

¹¹ The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, § XII.

B. Failure to Comply with Special Requirements for Plastic Materials.

Section XVIII of the 2015 Permit sets forth “Special Requirements” for facilities that handle Plastic Materials. The 2015 Permit defines Plastic Materials as including the following types of sources of Plastic Materials: “virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, dust, and other types of preproduction plastics with the potential to discharge or migrate off-site.” 2015 Permit, Findings, P(73). The 2015 Permit requires Facilities that handle Plastic Materials to implement specific BMPs to eliminate discharges of plastic in storm water.

At a minimum, Plastics Facilities are required to implement and include the following measures in a facility’s SWPPP:

- a. Containment systems at each on-site storm drain discharge location down gradient of areas containing plastic material. The containment system shall be designed to trap all particles retained by a 1mm mesh screen, with a treatment capacity of no less than the peak flow rate from a one-year, one-hour storm.
- b. When a containment system is infeasible, or poses the potential to cause an illicit discharge, the facility may propose a technically feasible alternative BMP or suite of BMPs. The alternative BMPs shall be designed to achieve the same or better performance standard as a 1mm mesh screen with a treatment capacity of the peak flow rate from a one-year, one-hour storm. Alternative BMPs shall be submitted to the Regional Water Board for approval.
- c. Plastics Facilities shall use durable sealed containers designed not to rupture under typical loading and unloading activities at all points of plastic transfer and storage.
- d. Plastics Facilities shall use capture devices as a form of secondary containment during transfers, loading, or unloading Plastic Materials. Examples of capture devices for secondary containment include, but are not limited to catch pans, tarps, berms or any other device that collects errant material.
- e. Plastics Facilities shall have a vacuum or vacuum-type system for quick cleanup of fugitive plastic material available for employees.
- f. Pursuant to Water Code section 13367(e)(1), Plastics Facilities that handle Plastic Materials smaller than 1mm in size shall develop a containment system designed to trap the smallest plastic material handled at the facility with a treatment capacity of at least the peak flow rate from a one-year, one-hour storm, or develop a feasible alternative BMP or suite of BMPs that are designed to achieve a similar or better performance standard that shall be submitted to the Regional Water Board for approval.

2015 Permit, § XVIII(A)(1). The 2015 Permit provides two exceptions for this requirement. The first is if the discharger has submitted a valid No Exposure Certification via SMARTS. *Id.*, § XVIII(A)(2)(a). The second is an exception from the requirement to install a containment system if a suite of eight required BMPs is implemented. *Id.*, § XVIII(A)(2)(b). The suite of eight BMPs is listed in Sections XVIII(A)(2)(b)(i) – (viii) of the 2015 Permit.

On information and belief, CBD alleges that Rehrig's Facility handles Plastic Materials as that term is defined in the 2015 Permit. On information and belief, CBD alleges that the Facility has not implemented a proper containment system, or alternate suite of eight BMPs, as required by the 2015 Permit. The Facility has failed to install proper containment systems or appropriate BMPs at all of its outfalls, or demonstrate why a containment system would be infeasible. On information and belief, CBD alleges that Rehrig discharged numerous plastic pellets from the Facility, including but not limited to the rain event at the Facility on March 21, 2018, in violation of Section XVIII(A)(2)(b)(viii) of the 2015 Permit. As Rehrig notes in its SWPPP, "Any plastic materials that are discharged or that migrate off-site constitute an illicit discharge in violation of this General Permit." *See* 2015 Permit, § XVIII(B)(2)(viii).

These failures to comply with the Special Requirements for Plastic Materials from the Facility are ongoing. Each day that the Facility operates without complying with the Special Requirements for Plastic Materials is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Rehrig is subject to penalties for violations of the General Permit and the Act since July 1, 2015.

C. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI (Monitoring Implementation Plan). The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The Monitoring and Implementation Plan requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event

during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year during qualifying storm events. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit shortens the preceding no discharge period for a qualifying storm event (“QSE”) to 48 hours. *See* 2015 Permit, § XI(B)(1). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements. Samples must be collected from each drainage area at all discharge locations and be representative of storm water associated with the Facility’s industrial activity any commingled discharges. *See* 2015 Permit, § XI(B)(4); *see also* 1997 Permit § B(5)(a).

On information and belief, CBD alleges that during the 2013-2014 and 2014-2015 wet seasons, Rehrig failed to collect and analyze a storm water sample from any storm events. During the first half of the 2015-2016 reporting year, CBD alleges that the Facility failed to collect and analyze the required storm water discharges in accordance with the General Permit. During the first and second halves of the 2016-2017 reporting year, CBD alleges that the Facility failed to collect and analyze second storm water discharges in accordance with the General Permit. During the first half of the 2015-2016 reporting year, CBD alleges that the Facility failed to collect and analyze the required storm water discharges in accordance with the General Permit. CBD alleges that local precipitation data compared to dates when the Facility did collect storm water samples or when it conducted visual observations of storm water discharges shows that discharges occurred on several dates during each of those wet seasons and reporting years. Specifically, CBD alleges that discharges occurred during QSEs on the following dates when the Facility was operating:

- November 21, 2013
- November 29, 2013
- December 19, 2013
- February 26, 2014
- February 27, 2014
- April 1, 2014
- October 31, 2014
- December 2, 2014
- December 12, 2014
- December 16, 2014
- December 30, 2014
- April 7, 2015
- May 8, 2015
- May 14, 2015
- September 15, 2015
- October 5, 2015
- January 5, 2016
- February 17, 2016
- April 8, 2016
- October 17, 2016
- December 15, 2016
- December 21, 2016
- January 5, 2017
- January 9, 2017
- January 19, 2017
- February 3, 2017
- February 6, 2017
- February 10, 2017

- October 20, 2017
- January 8, 2018
- March 21, 2018

CBD notes that Rehrig even made visual observations of storm water discharges on several of these days, yet it failed to collect and analyze storm water discharges on said days. These days are as follows: November 21, 2013; February 26, 2014; October 31, 2014; and May 14, 2015.

Further, CBD notes that Rehrig explained that its failure to take two of the required samples during the 2016-2017 reporting year was because the person supposed to take samples was either on vacation or away. This is not an acceptable excuse. Section X(D)(1)(c) of the 2015 Permit requires that the SWPPP include a Pollution Prevention Team with “procedures to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).”

CBD also alleges that the storm water sample collected from the Facility on March 22, 2018, was not taken during a qualifying storm event. Such an event must be preceded by 48 hours with no discharge from any drainage area. 2015 Permit, § XI(B)(1)(b). On information and belief, CBD alleges that the Facility was discharging storm water during the rain event on March 21, 2018, so March 22, 2018 was not a QSE.

CBD further alleges that the storm water sample taken at the Facility on April 19, 2016, could not have been from a qualifying storm event. CBD can find no record of any measured rainfall in the Los Angeles area during that week.

The above results in at least thirty violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Rehrig is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since June 7, 2013.

ii. Failure to Analyze for Required Pollutant Parameters

Under the 1997 Permit, facilities must analyze storm water samples for “toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” 1997 Permit, § B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for “[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment.” 2015 Permit, § XI(B)(6)(c).

Under the 1997 Permit, facilities must also analyze storm water samples for analytical parameters listed in Table D of the 1997 Permit. 1997 Permit, Section B(5)(c)(iii). For facilities with an SIC Code of 2821, Table D requires analysis of zinc. Under the 2015 Permit, facilities must also analyze storm water samples for applicable parameters listed in Table 1 of the 2015

Permit. 2015 Permit, § XI(B)(6)(d). For facilities with an SIC Code of 2821, Table 1 requires analysis of zinc.

On information and belief, CBD alleges that during the 2015-2016 reporting year, Rehrig failed to analyze its storm water discharges for zinc. This results in at least four violations of the General Permit. These violations are ongoing. City Fibers is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least March 11, 2016.

D. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, § B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CBD indicates that Rehrig has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit.

CBD puts Rehrig on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Rehrig is in ongoing violation of the General Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Rehrig is subject to civil penalties for all violations of the CWA occurring since June 7, 2013.

E. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The

objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent

Limitation B(3), Receiving Water Limitation C(3).

Despite these clear BMP requirements, Rehrig has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP describes an outfall at the rail spur. Rehrig claims that it cannot collect storm water samples from this outfall until the storm water is commingled with discharges not associated with the Facility. The 2015 Permit requires the discharger to identify an alternative discharge location to the extent that storm water run-on from surrounding areas cannot be controlled. 2015 Permit § X(C)(3). The SWPPP fails to identify an alternative location.

The Facility's SWPPP fails to comply with Section X(D)(1) of the 2015 Permit. Specifically, the SWPPP fails to include procedures to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to include efforts implement and maintain any advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded the EPA benchmarks and applicable NALs for pH, zinc, and O&G, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, Rehrig has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

CBD puts Rehrig on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBD will include additional violations as information and data become available. Rehrig is subject to civil penalties for all violations of the CWA occurring since June 7, 2013.

III. Persons Responsible for the Violations.

CBD puts Rehrig Pacific Company, William Rehrig, Michael Doka, and Ronald Johnson on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above,

CBD puts Rehrig Pacific Company, William Rehrig, Michael Doka, and Ronald Johnson on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the Center for Biological Diversity is as follows:

Emily Jeffers
Staff Attorney
Center for Biological Diversity
1212 Broadway, St. #800
Oakland, CA 94612
Tel. (510) 844-7100

V. Counsel.

CBD has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
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Oakland, California 94607
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VI. Penalties.

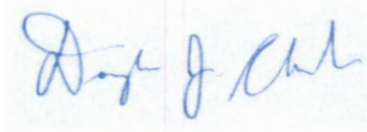
As detailed in this Notice of Intent to Sue sent to Rehrig, in accordance with requirements of the CWA, Rehrig is in violation of multiple requirements of the General Permit, including violations of receiving water limitations and effluent limitations, monitoring and reporting violations, plastics facility requirement violations, and SWPPP violations. Section 309 of the CWA, 33 U.S.C. § 1319(d), as adjusted by 40 C.F.R. § 19.4, provides for penalties of up to \$37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015. In addition to civil penalties, CBD will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBD believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBD intends to file a citizen suit under Section 505(a) of the Act against Rehrig

Rehrig Pacific Company
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and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBD would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBD suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBD does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Biological Diversity

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
State Water Resources Control Board
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Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
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Mike Stoker, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Samuel Unger, Executive Officer II
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT A
Rain Dates, Rehrig Pacific Company, Los Angeles, CA

11/21/2013	5/14/2015	12/30/2016
11/29/2013	7/18/2015	1/5/2017
12/19/2013	9/15/2015	1/9/2017
2/2/2014	10/5/2015	1/11/2017
2/27/2014	12/13/2015	1/12/2017
2/28/2014	12/19/2015	1/19/2017
3/1/2014	1/5/2016	1/20/2017
3/2/2014	1/6/2016	1/22/2017
4/1/2014	1/7/2016	1/23/2017
10/31/2014	1/31/2016	2/3/2017
11/1/2014	2/17/2016	2/6/2017
11/30/2014	2/18/2016	2/7/2017
12/2/2014	3/6/2016	2/10/2017
12/3/2014	3/7/2016	2/11/2017
12/12/2014	3/11/2016	2/17/2017
12/16/2014	4/8/2016	5/7/2017
12/17/2014	10/17/2016	10/20/2017
12/30/2014	11/20/2016	1/8/2018
1/10/2015	11/21/2016	1/9/2018
1/11/2015	11/26/2016	3/2/2018
2/22/2015	12/15/2016	3/10/2018
2/28/2015	12/16/2016	3/15/2018
3/1/2015	12/21/2016	3/16/2018
3/2/2015	12/22/2016	3/21/2018
4/7/2015	12/23/2016	3/22/2018
5/8/2015	12/24/2016	